

**0800190 [2008] RRTA 127 (8 April 2008)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0800190

**DIAC REFERENCE(S):** CLF2007/153210

**COUNTRY OF REFERENCE:** Pakistan

**TRIBUNAL MEMBER:** Don Smyth

**DATE DECISION SIGNED:** 8 April 2008

**PLACE OF DECISION:** Brisbane

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant, who claims to be a citizen of Pakistan, arrived in Australia and applied to the Department of Immigration and Citizenship (the Department) for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and her review rights by letter.

The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.

The applicant applied to the Tribunal for review of the delegate's decision.

The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

### **RELEVANT LAW**

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.

Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

#### **Definition of 'refugee'**

Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

## **CLAIMS AND EVIDENCE**

The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

The applicant initially appeared before the Tribunal to give evidence and present arguments. Due to difficulties with the interpreting, the hearing was adjourned. The Tribunal also received oral evidence from the applicant's family members, F2 and F1. The Tribunal hearing was conducted with the assistance of an interpreter in the Punjabi and English languages.

The applicant was represented in relation to the review by her registered migration agent.

According to information provided in her protection visa application, the applicant stated where and when she was born, in Town T, Pakistan. She described her religion as Ahmadi Muslim. She lived at a single address in Suburb S (Town T) for a stated period. She then lived at an address in City A until recently. The applicant indicated that she had never engaged in any education or employment.

The applicant travelled to Australia on a valid Pakistani passport. The applicant claimed that, because of her Ahmadi religion, she had had to pay extra money to get a passport.

The applicant's family members, F1 and F2 are citizens of Australia. At the time of her application, the applicant's other family member, F3, was resident in Pakistan.

The applicant set out her claims in her application and a Statutory Declaration. She stated that she left Pakistan because she was being persecuted there because of her Ahmadi religion. She claimed to fear being killed in Pakistan.

The applicant claimed that she was born into a Sunni Muslim family in Town T. In her teens, she married an extended family member in an arranged marriage. Several years into her marriage, the marriage of her family member F4, deteriorated such that F4 separated and later divorced. This meant that the applicant had to divorce her husband as well.

The applicant claimed that, many years later, she entered into another marriage, this time with an Ahmadi man. She converted and joined the Ahmadiyya community. Her parents disapproved of the marriage. In her Statutory Declaration, the applicant outlined the basis for her belief in the Ahmadiyya faith.

The applicant stated that, from the day of her conversion, she began to suffer great persecution and discrimination. People started calling her "Kafir" meaning infidel. Her family disowned her and some of her friends stopped talking to her. Her family and religious extremist Sunni Muslims threatened to kill her. She had to leave her husband's village, Village V and remained hidden for some years. After that time, the applicant and her husband

returned to Village V, near City B, Punjab. Many Muslims were still against them and the Ahmadiyya community. They considered Ahmadi people to be heretics. Newspapers and mosques promoted this belief.

The applicant described the targeting of Ahmadis and their properties in rioting during Year 1. She referred to the killing of many Ahmadis, the plundering of their property and the burning of their homes and shops. She stated that in Village V extremist Mullahs with other people attacked their homes. These people locked their main door from the outside when they were in their home. The people shunned them and they lost all their links to the outside world. The people established a camp in front of their home and used a loud speaker to abuse and threaten them. The applicant stated that an armed team of dozens of people remained in the camp and monitored them 24 hours a day. They had no food, no toilet facility and no water. Their lives were continually threatened. The condition of their livestock deteriorated. The applicant described being confined for an extended period.

The applicant stated that, during this time in Year 1, the Pakistani Government approved a new amendment to the constitution explicitly depriving Ahmadis of their identity as Muslims. The applicant indicated that her religion was referred to in her passport. She referred to the promulgation of the anti-Ahmadiyya Ordinance under which Ahmadis were deprived of their right to Azan (call for prayers), say Kalima (state that their mosques are real mosques), say Muslim greetings or even to pose as Muslims. She indicated that breaches could result in serious penalties or even death.

The applicant stated that, following the death of her husband in Year 3, she stayed with her family member, F3, and F3's spouse. Some years later, she had to leave Village V as it was becoming very hard for her to remain there. She was abused as she walked the streets. She was threatened and warned to change her religion. She drew a lot of attention to F3's family, leading one of F3's family to feel threatened. She left Village V to live in another city, Suburb S, with her family member, F1. The applicant stated that F3's problems as an Ahmadi were gradually becoming worse.

The applicant indicated that F1, a professional, received a post in a government institution at a nearby village, Village W. However, the village started to create problems for F1 as soon as the people realised that she was an Ahmadi Muslim. Some women were ordered to attack F1 at her workplace. The authorities registered a case against her in the local court, alleging that she preached her beliefs at her workplace and insulted the Holy Quran.

The applicant also referred to punishment of her family member, F2, by the authorities. She stated his profession and that he was an Ahmadi Muslim. One day when he was working in his shop, he was arrested as he had Quranic verses displayed in his shop. He waited some months to be bailed.

During this period, the applicant's family members, F2, F1 and their child applied Australian visas. They were issued a certain type of Visa and received permanent residency.

The applicant described the period following the departure of her family members F1 and F2 as the hardest time of her life. She stated that the authorities discovered that they had left and stated that they would kill them if they returned. The applicant stated that she was not able to walk the streets, to shop or pick up medicines as people verbally abused her. She had to change her doctor many times because, as soon as the doctor was approached by extremists, he would stop giving her medication. She was unable to buy groceries from the local shops

because the shop owners were threatened and stopped by the extremists from selling anything to her.

The applicant stated that her situation worsened in Year 4. The extremists in Suburb S blocked her water and sewerage supply. She became very afraid and locked herself in her home. Her family member F1 then sponsored her to come to Australia for a short time.

The applicant claimed that she left her home in Suburb S in late Year 4 due to threats on her life. She spent some months at the residence of a relative in City A. In City A, she kept indoors so as not to draw unwanted attention to herself and to those providing her with temporary protection. The applicant stated that Ahmadis were also persecuted in City A and that this was true across Pakistan.

The applicant stated that she could not return to her home in Suburb S as it was now occupied by a "relative who is a member of a gang". She stated that she had been threatened not to return. In the absence of her relatives, the gang members were free to demand money from her and take her home for their own residence.

The applicant claimed that it was extremely easy in Pakistan to kill an Ahmadi and then get a Mullah's support to avoid prosecution. The applicant stated that she would never acquire basic human rights if she were returned to Pakistan.

In Year 5, the applicant's adviser made a submission in support of the applicant's claims. It was submitted that the applicant faced a real chance of suffering harm amounting to persecution from "anti Ahmadiyya supporters". The government of Pakistan and its agencies had demonstrated an inability/unwillingness to offer her meaningful protection. They did not provide Ahmadis with adequate protection from societal violence. It was submitted that religiously motivated violence, particularly against Ahmadis, existed throughout Pakistan. The government's political alliance with militant religious parties served to strengthen these groups. The submission highlighted a number of activities from which Ahmadis in Pakistan were barred, referring in this regard to information from the United States Commission on International Religious Freedom. It was submitted that the practice of the Ahmadi religion was severely restricted by law in Pakistan, that Ahmadis were frequently victims of religious violence, and that they suffered harassment and discrimination. It was submitted that the applicant's fear related to the whole of Pakistan and that relocation would not be an option.

The submission outlined the applicant's claims. It also set out a brief history of Pakistan. It referred to Pakistan as an Islamic state and indicated that the Government imposed limits on freedom of religion. It was submitted that the Ahmadiyya community were treated as outcasts and lacked any standing in the Pakistani community. They had suffered persecution for over five decades. The submission referred to historical prejudice towards Ahmadis in Pakistan, attacks on Ahmadis and laws targeted at Ahmadis. It was submitted that all public acts of worship or devotion by an Ahmadi could be treated as a criminal offence. Under section 295(c) of the Pakistan Penal Code, the mere existence of practising Ahmadi Muslims could be considered blasphemous and punishable by death. Under section 298(c), Ahmadis calling themselves Muslims were liable to prosecution and imprisonment up to three years.

The submission made reference to a number of incidents in which Ahmadis had charged or arrested under blasphemy laws or other laws. It referred to a number of attacks on Ahmadis and their property. Reference was made to an incident in Punjab province in June 2006 in which the police reportedly failed to intervene when Ahmadi shops and homes were attacked.

The submission highlighted another incident in July 2004 when police retained property of the local Ahmaddiya community following riots. It also set out details of a number of cases in which Ahmadi people were killed, including cases documented in an Amnesty International report and in an article from *USA Today*. It was submitted that the safety of Ahmadis in Pakistan was under threat.

The submission drew on a number of independent reports, including reports from Amnesty International, Human Rights Watch and the US Department of State. It also referred to a 2005 report published in the *Harvard Human Rights Journal* and entitled "Persecution of the Ahmaddiya community in Pakistan: An Analysis Under International Law and International Relations". Full copies of a number of these reports were attached to the submission.

Also submitted in support of the application were maps showing the location of Suburb S, and City B, and a letter from a senior officer of the Ahmadiyya Muslim Association of Australia Inc. stating that the applicant was a member of the Ahmadiyya Muslim Community.

### *Review Application*

The delegate's decision made reference to material suggesting that the applicant had previously travelled to Australia, and the period of time she remained in the country. This information was in the form of Departmental records indicating that a person with the applicant's name and a stated date of birth had entered Australia in Year 2. In support of the review application, the applicant's adviser made submissions disputing that the applicant had previously travelled to Australia in Year 2. It was submitted that the applicant's name was very common and that a case of mistaken identity was not unforeseeable. It was submitted that there were a large number of people with the applicant's name listed in the City A telephone book. A copy of records from the "[a] Telephone Directory" was produced to the Tribunal. It was submitted that the name had come to prominence during the division of India and Pakistan in 1949. The applicant's date of birth was given as stated as she had moved from India to Pakistan during an independence upheaval. Her birth documents had been lost and she had been given the date she had like many other people at the time, increasing the likelihood of a person having the same name and date of birth.

Also produced to the Tribunal was a copy of an incoming passenger card showing that a person with the applicant's name and birth year did arrive in Australia in Year 2. It was noted that the incoming passenger card contained a signature. It was submitted in this regard that the applicant was illiterate and unable to sign. It was submitted that, while the incoming passenger card indicated a birth year and a passport number, the information in the Department's movement records referred to a similar birth date and an identical document ID. It was submitted that "inaccuracy of typing information" led to a confusion as to identity. A copy of the Department's movement records was produced to the Tribunal.

The material produced to the Tribunal included a copy of what appeared to be an Outgoing Passenger Card relating to the departure of a named person with a stated birth year in Year 2. While the document is not legible in its entirety, it appears to contain an annotation stating "unable to sign". It does not appear to contain a signature similar to that on the corresponding Incoming Passenger Card.

It was submitted that, based on the incoming passenger card in Year 2, it could be concluded that there had been a case of mistaken identity and that the applicant had never previously

been to Australia. The applicant's adviser indicated that he was seeking to make further inquiries through a government agency in Pakistan.

The applicant herself made a Statutory Declaration, which was dated, in which she stated that she had never previously travelled outside Pakistan, that she had not been present in Australia in Year 2 and that her current Pakistani passport was the only passport she had ever held.

With regard to her delay in travelling to Australia, the applicant referred to a letter from the Department, requesting a security bond prior to the grant of her visa. It was submitted that the sum had been deposited soon after. Copies of the department's letter and the Confirmation of Security Bond Lodgment were produced to the Tribunal.

It was submitted that, following payment of this bond, there was very little money left to finance a ticket to Australia. Her family members F1 and F2 had to raise further funds following this to purchase the ticket. The applicant stated that the reason for the delay between the granting of the visa and her travel to Australia was the lack of funds to finance her travel. It then took time to make arrangements with the Airlines to assist her with her travel and to find someone to travel with her. The applicant stated that she was not young and illiterate, and required general assistance during her travel. The applicant stated when she had bought her ticket but had been unable to travel until some time later because the airline needed time to organise her travel assistance package. She produced a copy of her airline ticket. The applicant submitted that payment of the large security bond by her family should illustrate the need for her to leave Pakistan for her own protection and safety.

With regard to the delay in making her protection visa application once she had arrived in Australia, the applicant stated the date that her other visa had expired. The applicant stated that she had had every intention to go back. She had been forced to make a protection visa claim due to the occupation of her home by gang members who threatened that she should not return and the absence of police assistance. She had thought that the gang members would leave her vacant home but this had not happened. She stated that gang members in Suburb S and the nearby region were notorious and responsible for a range of crimes.

The applicant stated that, if she were to return, the current circumstances in Pakistan would mean that the police would definitely be unable to protect her. She would have to abandon her home in Suburb S permanently and be homeless without family support. The applicant claimed not to be on talking terms with her family member, F3.

The applicant referred to discrimination and violence against Ahmadis. She stated that they were not free to practice their religion in an open manner.

A number of additional reports relating to the treatment of Ahmadis were submitted to the Tribunal.

It was submitted on behalf of the applicant that there was no part of Pakistan that she could return to. Her home had been taken over by a Sunni gangster and, if she were to return, she would be physically punished or held for extortion as gang members would know that she had returned from an overseas country and that her family would be able to pay foreign currency.

The applicant's adviser made a further submission. Attached to the submission was a copy of the applicant's incoming passenger card and related movement records relating to her arrival



in Year 5. The submission pointed out that the incoming passenger card clearly indicated that the applicant was unable to sign and contained a stated date of birth. This was contrasted with the Year 2 incoming passenger card (referred to above) that contained “a simplified date of birth of [year]”.

With regard to the applicant’s delay in obtaining a visa, it was submitted when the applicant had applied for a visa but had not been issued with one until some months later. The Tribunal was provided with a form relating to the processing of the applicant’s earlier Visa application, which records the date that the application was received. It records the date that a bond was requested and the date it was received. Also produced to the Tribunal was a letter from the Department acknowledging the date of lodgment of the visa application and a copy of the receipt for payment of the application fee.

It was submitted that the applicant had been living in fear at the time of her visa application in Year 4. Her situation in Suburb S had then become worse, leading her to move to City A in late Year 4. It was submitted that, as a particular type of female living alone in Suburb S, she had been more vulnerable to attacks and harassment than an average Ahmadi would be. The submission pointed out that the applicant’s Proforma for Offshore Applicants in her group stated that she lived alone. A copy of this proforma was submitted to the Tribunal. It was submitted that the applicant had been forced to leave her home in Suburb S and seek refuge in City A. There had been a reasonable delay in her obtaining her earlier visa. The delay in departing once she had received a visa had been due to financial constraints.

Also submitted to the Tribunal was a copy of a DIAC Form lodged by the applicant. The submission noted that the form revealed the applicant’s date of birth and indicated her wish to travel as soon as possible. It also showed her relationship with various people in Australia. It was submitted that her responses confirmed her support in Australia and established that she had never previously applied for a visa to come to Australia. It was submitted that, if the processing officer overseas had been “satisfied of this truth” and eventually granted the applicant a visa, then “it is factually wrong for the primary decision maker of her protection visa to make the ‘informed decision’ that she was present in Australia in Year 2 based on the Movements records before him” It was also noted that the applicant had signed the forms with her thumb print.

Various other documents produced to the Tribunal also disclose the applicant’s relationship to her Australian citizen family member, F1. These documents include an “Application [to visit Australia] signed and dated by F1 and a “[description of a] Certificate” issued in Suburb S, Pakistan. Also submitted to the Tribunal were copies of the applicant’s passport, her Pakistani National Identity Card and an affidavit in which she stated that the date of birth on her National Identity Card and passport was correct.

Also submitted to the Tribunal was a document from a senior officer of the Ahmadiyya Muslim Association of Aust. Inc. The senior officer provided information relating to the status and treatment of the Ahmadiyya community in Pakistan. The senior officer stated that the applicant had never visited Australia before her current visit in Year 2, that she had no relatives in Australia at that time and that there were very few Pakistani people of Ahmadiyya origin in Australia at that time. He stated that, if the applicant had visited, his group would have known due to their unique connection with each member of the Ahmadiyya community. He stated that every member of the Ahmadiyya community who came to Australia had had to register with the existing Jamaat in the relevant state.

The senior officer stated that Ahmadis were not treated well in Pakistan. They continued to be targeted and the situation did not look better in the future. He stated that an Ahmadi had recently been shot in Karachi. He attached to the statement further information concerning this incident. The senior officer stated that it was well known that the majority of Ahmadis were concentrated around the Lahore area.

The senior officer attested to the fact that the applicant was an “honest and dedicated Ahmadee lady”.

#### *Further Tribunal Hearing*

By letter, the Tribunal invited the applicant to attend a Tribunal hearing. At this hearing, the applicant’s adviser and her family member F2 expressed a concern that the applicant was unable to understand the interpreter. The interpreter also expressed some concerns about her ability to communicate with the applicant. It was apparent to the Tribunal that the quality of the communication between the interpreter and the applicant was not good. The Tribunal therefore decided to adjourn the hearing. The applicant’s adviser indicated on that date that he would be outside Australia until a stated date and requested that the hearing be adjourned until after that date. The Tribunal declined this request.

By letter faxed to the applicant’s authorised recipient, the Tribunal invited the applicant to attend a resumption of the adjourned hearing. The Tribunal’s inquiries revealed that no suitably qualified interpreters in the Punjabi language were available to the Tribunal in that location. This was the position regardless of the hearing date. The Tribunal therefore arranged for an interpreter to be flown from another city to attend the later hearing. At that hearing, the applicant’s family members, F1 and F2 were able to identify the interpreter. Prior to the commencement of the hearing, they and the applicant’s adviser expressed to the hearing attendant concern about the interpreter. The Tribunal accepts that they had genuine concerns about the interpreter and his suitability. The Tribunal took time to consider the information submitted to it in this regard. The applicant’s adviser then communicated to the hearing attendant a proposed arrangement under which the applicant’s family F2 would remain in the room while the applicant gave her evidence. This was communicated to the Tribunal. At the commencement of the hearing, the Tribunal confirmed with the applicant’s adviser that she was willing for the hearing to proceed on this basis. She expressed no objection or reservation. The hearing proceeded in the manner proposed by the applicant’s adviser. No deficiencies in the interpreting or the conduct of the interpreter at the hearing have been identified to the Tribunal.

At the Tribunal hearing, the applicant gave evidence that was generally consistent with her written claims. She reiterated that she had become an Ahmadi after marrying an Ahmadi person. She stated that her family had turned against her after her marriage. The people in her village had turned against her, especially after the death of her husband.

The applicant confirmed that her husband came from Village V. She reiterated that she and her husband had had to leave Village V after some years. When asked by the Tribunal how she and her husband had been able to return to Village V to live, she stated that they had thought that the matter might have cooled down. However, they had found the situation to be the same when they returned and had had to leave again. The applicant was unable to recall precisely when she had left Village again but indicated that she had still been living there at the time of her husband’s death in Year 3. The Tribunal put to the applicant that it appeared that she had lived in Village V for a lengthy period. It asked her whether she had had

problems while living in Village V. She stated that they had faced a lot of problems because of their religion. They had been treated as outcasts.

The applicant described living with her family member F1 after her husband's death. She stated that a court case had been lodged against her family member F2. After the departure of F1 and F2 for Australia, people had wanted to know where she had hidden F1. The applicant stated that the case related to an allegation that F2 and F1 were non-Muslims and should not be praying like Muslims. The applicant stated that the police had arrested F2 while he was sitting at his shop. They had held him for some months.

The Tribunal asked the applicant whether she had considered coming to Australia at the same time as F1. The applicant stated that she had not thought about it at that stage. The situation had become worse after the departure of F1 and F2. People had given her more problems when they found she was living alone. For instance, the people from the neighbourhood had tried to force her to sell her house. They had claimed that she had borrowed money and threatened to lodge a false case against her. The people would harass her mentally and physically. They would not allow her to leave her home or to live there peacefully. She could only go out shopping when there was no one around. The applicant stated that almost all the people in her village knew that she was Ahmadi.

The Tribunal put to the applicant the date that she had been issued with a passport. It asked her why she had waited until much later to make an application for an Australian visa. The applicant stated that she had not had enough money. Somehow she had arranged the money for the visa. The applicant was unable to identify how she had arranged the money for the visa.

The applicant initially indicated that she had been living in Suburb S prior to coming to Australia. She then stated that she had spent a few months in City A, living with a distant relative who was also Ahmadi. The Tribunal asked the applicant whether there was any reason why she could not return to City A if she did not want to go back to Suburb S. She stated that it would be hard for her to stay permanently because no one would take responsibility for another person for a long time. She stated that it was hard to live in the cities. Her distant relative had told her that she could not continue to live at his house. The applicant indicated that she had not had any problems in City A. The applicant indicated that she had practised her Ahmadi religion in City A. She stated that she had gone to the mosque a few times. Her health had prevented her from going more than that. She had mostly practised in the house.

The applicant stated that people in the neighbourhood had taken her house in her absence. She was initially unable to identify the people who had taken her house but later stated who it was. She stated that extended family members had told her about this. She stated that it would not be safe for her to return.

The Tribunal asked the applicant what she was afraid would happen to her if she went back to Pakistan. She stated that it would be hard for her to live there peacefully. She had no place to live.

The applicant indicated that she was practising as an Ahmadi in Australia. She stated that she attended Friday prayers.

The applicant again denied the suggestion that she had been in Australia in Year 2. She stated that she had never been outside Pakistan before her current trip to Australia.

She stated that she had no contact with her family member, F3. She said that this was because of personal differences with F3's spouse. The applicant stated that F3's spouse had indicated a return to the spouse's own parents if F3 kept the applicant with them.

The applicant's family member F3, gave evidence at the hearing. F3 gave information concerning the treatment of the Ahmadiyya population in Pakistan. F3 stated that Ahmadis could not call themselves Muslim under Pakistani law and could be arrested if they practised in a similar manner to the Islamic tradition. Anyone from the community could go to the police and report that an Ahmadi had been practising like a Muslim. The mosques and the religious schools taught that a person would get a good place in heaven if they killed an Ahmadi. At social gatherings, people would not want to share their cutlery with Ahmadis or even sit with them.

The applicant's family member F2 described at length their own mistreatment in Pakistan. F2 described being arrested by some policemen. F2 indicated that this had occurred without the production of a warrant. F2 described being charged for insulting the holy book and practising their religion. F2 described being jailed. F2 indicated that it had taken some months for the Court to grant bail. The case had then been transferred to another court to proceed. F3 stated that their case had been transferred to a different court. F2 had then been facing death or life imprisonment. However, it was possible to delay the trial. F2 stated that they had applied to a government agency in Pakistan and had finally been granted a visa. F2 stated that they had not realised at that time what would happen to the applicant.

The applicant's family member F2 described problems experienced by the applicant in Pakistan. F2 stated that it was easy to abuse Ahmadis. F2 referred to people entering the applicant's house without permission, asking for money and taking things. F2 stated that her water supply and drainage system had been blocked. If she went to the doctor, people would approach the doctor and he would stop giving her medicine.

The applicant's family member F2 stated that the applicant's distant relative had helped the applicant. That distant relative faced similar problems to those experienced by the applicant. F2 stated that City A was a big city and the applicant was not known as an Ahmadi there.

The applicant's family member F2 stated that they had had to pay a large sum of money to get the applicant's visa. F2 had used money from various sources.

The applicant's family member F2 stated that the applicant would not survive if she returned to Pakistan because people had taken over her home. There would be no police or court to help her.

The applicant's family member F1 also gave evidence. F1 described problems experienced by the family in Year 1. F1 stated that they had gone to Suburb S for an education. After their father's death, F1 had returned with F3 to their original village. F1 stated that the applicant had always been sad. The applicant never saw a group of her relatives. F1 stated that F3's spouse had not behaved well towards the applicant because F3's spouse believed that the applicant was responsible for their problems.

The applicant's family member F1 stated that they had found a job in another village. F1's relatives had then decided to marry F1 to another person. After the marriage, F1 had shifted to the extended family's house and the applicant had moved close by. F1 referred to cases brought against both F1 and F2. F1 stated that these problems had affected the applicant.

The applicant's family member F1 stated that, following their departure for Australia, the applicant had remained alone in her home. All the problems they had faced were shifted to the applicant who had been unable to get medicine or go outside. People would threaten her. Sometimes she would spend many hours without food or medicine. F1 stated that an extended family member was also very weak and asthmatic.

The applicant's family member F1 described efforts to force the applicant to leave her house. F1 stated that the applicant had been forced to leave her home and live in City A. F1 stated that they had been unable to arrange the applicant's departure immediately due to a lack of finances after paying the bond. F1 stated that it would be impossible for the applicant to live safely in Pakistan.

The applicant's adviser suggested that the applicant's problems would be exacerbated due to the fact that she was an Ahmadi who had converted from Sunni Islam. She suggested that the applicant would have had no reason to come to Australia in Year 2. She suggested that a Pakistani woman would go to Mecca rather than Australia. The applicant's adviser also drew attention to the applicant's situation as a lady of a particular group by herself in Pakistan.

## INDEPENDENT COUNTRY INFORMATION

### *Ahmadis*

*The Oxford Dictionary of Islam* provides the following information about Ahmadis' beliefs, practice and history:

**Ahmadis.** Controversial messianic movement founded by Mirza Ghulam Ahmad in Qadian, Punjab (British-controlled India), in 1889. Founder claimed to be a "nonlegislating" prophet (thus not in opposition to the mainstream belief in the finality of Muhammad's "legislative" prophecy) with a divine mandate for the revival and renewal of Islam. Dedicated to peaceful propagation of faith, production of literature, and establishment of mosques and missionary centers. Rejected by the majority of Muslims as heretical since it believes in ongoing prophethood after the death of Muhammad. Currently based in Pakistan, but forbidden to practice, preach, or propagate their faith as Islam or their places of worship as mosques. Consists of two factions: Qadiani and Lahori (who stress Ghulam Ahmad's claim to be a "renewer" of the faith rather than a prophet). Current head, Mirza Tahir Ahmad, resides in London. See also Ghulam Ahmad, Mirza (Esposito, John L., ed) 2003, *The Oxford Dictionary of Islam*, Oxford University Press, Oxford, pp.11 – 12

### *Treatment of Ahmadis in Pakistan*

Independent information indicates that Ahmadis are declared by the Pakistani constitution to be non-Muslim and are subject to anti-Ahmadi laws. The US Department of State has made the following observations in this regard:

Specific laws that discriminate against religious minorities include anti-Ahmadi and blasphemy laws that provide the death penalty for defiling Islam or its prophets...

The Ahmadiyya community continued to face governmental and societal discrimination and legal bars to the practice of its faith...

The Constitution establishes Islam as the state religion. It also declares that adequate provisions shall be made for minorities to profess and practice their religions freely; however, in reality the Government imposes limits on freedom of religion, particularly on Ahmadis...

A 1974 constitutional amendment declares Ahmadis to be non-Muslim. Section 298(c), commonly referred to as the "anti-Ahmadi laws," prohibits Ahmadis from calling themselves Muslims, referring to their faith as Islam, preaching or propagating their faith, inviting others to accept the Ahmadi faith, or insulting the religious feelings of Muslims. The punishment for violation of the section is imprisonment for up to 3 years and a fine. Other religious communities were generally free to observe their religious obligations; however, religious minorities are legally restricted from public display of certain religious images and, due to discriminatory legislation and social pressure, are often afraid to profess their religion freely.

Freedom of speech is subject to "reasonable" restrictions in the interests of the "glory of Islam." The consequences for contravening the country's blasphemy laws are death for defiling Islam or its prophets; life imprisonment for defiling, damaging, or desecrating the Qur'an; and 10 years' imprisonment for insulting another's religious feelings. These laws are often used to settle personal scores as well as to intimidate reform-minded Muslims, sectarian opponents, and religious minorities. Under the Anti-Terrorist Act, any action, including speech, intended to stir up religious hatred is punishable by up to 7 years of imprisonment. Under the act, bail is not to be granted if the judge has reasonable grounds to believe that the accused is guilty; however, the law is applied selectively. (US Department of State, *International Religious Freedom Report 2007: Pakistan*, 14 September)

The history of laws discriminating against religious minorities, and the Ahmadiyya community, is outlined in an article in the *Harvard Human Rights Journal* by Amjad Mahmood Khan. Khan stated:

In 1974, a new wave of anti-Ahmadi disturbances spread across Pakistan. Having made significant gains in their twenty-year political struggle for an Islamic theocracy, members of the *ulama* saw the disturbances as their opportunity to pressure Prime Minister Zulfikar Ali Bhutto to declare Ahmadis as non-Muslims. Under Bhutto's leadership, Pakistan's parliament introduced Articles 260(3)(a) and (b), which defined the term "Muslim" in the Pakistani context and listed groups that were, legally speaking, non-Muslim.[31] The goal of this constitutional amendment was to bring some of Pakistan's remaining progressive constitutional provisions under the purview of the *Shari'a*. Put into effect on September 6, 1974, the amendment explicitly deprived Ahmadis of their identity as Muslim.

In early 1978, General Mohammad Zia-ul-Haq, now safely installed as president after a coup overthrowing Bhutto, pushed through parliament a series of laws that created a separate electorate system for non-Muslims, including Ahmadis...

[T]he Federal Shariat Court, accorded wide discretionary power, became the state's legal instrument to legitimize subsequent criminal ordinances passed by parliament. These ordinances included five that explicitly targeted religious minorities: a law against blasphemy; a law punishing the defiling of the Qur'an; a prohibition against insulting the wives, family, or companions of the Prophet of Islam; and two laws specifically restricting the activities of Ahmadis.[37] On April 26, 1984, Zia-ul-Haq

issued these last two laws as part of Martial Law Ordinance XX, which amended Pakistan's Penal Code and Press Publication Ordinance Sections 298-B and 298-C. Ordinance XX undercut the activities of religious minorities generally, but struck Ahmadis in particular. For fear of being charged with "indirectly or directly posing as a Muslim," Ahmadis could no longer profess their faith, either verbally or in writing. Pakistani police destroyed Ahmadi translations of the Qur'an and banned Ahmadi publications, the use of any Islamic terminology on Ahmadi wedding invitations, the offering of Ahmadi funeral prayers, and the displaying of the *Kalima* (the principal creed of a Muslim) on Ahmadi gravestones. In addition, Ordinance XX prohibited Ahmadis from declaring their faith publicly, propagating their faith, building mosques, or making the call for Muslim prayers. In short, virtually any public act of worship or devotion by an Ahmadi could be treated as a criminal offense.

With the passage of the Criminal Law Act of 1986, parliament advanced Ordinance XX's severe restrictions. The "Blasphemy Law," as the Act came to be referred to, amended Section 295-C of the Pakistan Penal Code by raising the penalty against blasphemy from fine or imprisonment to death.[40] Because the Ahmadi belief in the prophethood of Mirza Ghulam Ahmad was considered blasphemous insofar as it "defiled the name of Prophet Muhammad,"[41] Zia-ul-Haq and the Pakistani government institutionalized the persecution of Ahmadis in Pakistan with Section 295-C. The mere existence of practicing Ahmadi Muslims could be considered blasphemous and punishable by death. (Khan, Amjad Mahmood 2003, 'Persecution of the Ahmadiyya Community in Pakistan: An Analysis under International Law and International Relations', *Harvard Human Rights Journal*, Spring 2003, vol 16 <http://www.law.harvard.edu/students/orgs/hrj/iss16/khan.shtml#Heading55> - Accessed 4 March 2008)

Khan refers to persecution of the Ahmadiyya, which he describes as "wholly legal" under Pakistani law:

For over five decades, Ahmadis have endured senseless persecution. Their mosques have been burned, their graves desecrated, and their very existence criminalized. According to a 2002 United States State Department report, since 1999 316 Ahmadis have been formally charged in criminal cases (including blasphemy) owing to their religion.[6] Between 1999 and 2001, at least twenty-four Ahmadis were charged with blasphemy; if convicted, they could be sentenced to life imprisonment or death.[7] The offenses charged included wearing an Islamic slogan on a shirt, planning to build an Ahmadi mosque in Lahore, and distributing Ahmadi literature in a public square.[8]

Ahmadis consider themselves Muslims, and yet their persecution is wholly legal, even encouraged, by the Islamic Republic of Pakistan and its leadership. (ibid.)

Human Rights Watch reported that, in 2006, at least 25 Ahmadis were charged under various provisions of the blasphemy law (Human Rights Watch 2007, "Pakistan: Pandering to Extremists Fuels Persecution of Ahmadis", 6 May, <http://www.hrw.org/english/docs/2007/05/06/pakist15848.htm>). Similarly, Amnesty International reported as follows:

The state failed to protect members of religious minorities from abuse by private individuals. At least 72 people were charged and arrested under blasphemy laws, including laws that make it a criminal offence for members of the Ahmadiyya community to practise their faith. Among the accused were 39 Muslims, 26 Ahmadis, four Hindus and three Christians (Amnesty International 2006, *Amnesty International*

With regard to violence against the Ahmadiyya community in Pakistan, the US Department of State has stated, “The Ahmadi community claims that 171 of their members have been killed since 1988 and that the government made little effort to bring those responsible for these and other acts of sectarian violence to justice or to provide protection for the targets or their families.” (US Department of State 2007, *Country Reports on Human Rights Practices – Pakistan*, 6 March <http://www.state.gov/g/drl/rls/hrrpt/2006/78874.htm> - Accessed 14 November 2007)

In its most recent report on human rights practices in Pakistan, the State Department noted that police “often failed to protect members of religious minorities--particularly Christians, Ahmadis, and Shi'as--from societal attacks” (US Department of State 2008, *Country Reports on Human Rights Practices – Pakistan*, 11 March). It provided the following commentary on the recent use of Pakistan’s legal provisions against the Ahmadiyya community:

The law declares the Ahmadi community, which considers itself a Muslim sect, to be a non-Muslim minority. The law prohibits Ahmadis, who claimed approximately two million adherents, from engaging in any Muslim practices, including using Muslim greetings, referring to their places of worship as mosques, reciting Islamic prayers, and participating in the Hajj or Ramadan fast. Ahmadis were prohibited from proselytizing, holding gatherings, or distributing literature. Government forms, including passport applications and voter registration documents, require anyone wishing to be listed as a Muslim to denounce the founder of the Ahmadi faith. In 2005 the government reinstated the religion column for machine readable passports. The Ahmadi community claimed that between July 2006 and June 30, 28 Ahmadis faced criminal charges under religious laws or because of their faith.

The penal code calls for the death sentence or life imprisonment for anyone blaspheming the Prophet Muhammad. The law also provides for life imprisonment for desecrating the Koran and up to 10 years in prison for insulting another's religious beliefs with the intent to offend religious feelings. The latter was used only against those who allegedly insulted the Prophet Muhammad. Groups such as the Khateme Nabuwat Movement, which considered anyone who questioned the finality of Prophet Muhammad to be a heretic, were known to insult Ahmadi beliefs; however, the law was not used against them.

On January 27, an Intelligence Bureau district officer ordered the arrest of five Ahmadis, including two minors ages eight and 11, after a teacher discovered the minors carrying an Ahmadi children's magazine, *Tashhizul Azhan*, in their schoolbags. The case received wide press coverage and the charges were dropped; however, the case was refiled on February 3 against two adults. By year's end no movement on the case had occurred. (ibid., Section 5)

On March 1, a retired police officer shot and killed a recent Ahmadi convert in a restaurant in Seerah, Mandi Bahauddin District. The retired officer later surrendered to police and admitted to the killing, claiming the act was justified under Islamic apostasy laws. The trial was ongoing at year's end.

In late October journalist Abdul Dogar was released after agreeing that he would not “indulge in any religious activity against Islam.” Dogar was arrested in September 2006 on anti-Ahmadi provisions of the law, maintenance of public order, and the Anti-Terrorism Act.



The State Department also noted that Ahmadi, Christian, Hindu, and Shi'a Muslim communities reported significant discrimination in employment and access to education, including at government institutions (ibid.).

In its most recent report on religious freedom, the State Department reported that authorities “often accused converts to the Ahmadiyya community of blasphemy, violations of the anti-Ahmadi laws, or other crimes” It stated that Ahmadis continued to be arrested for preaching their faith. The report documented numerous instances in which Ahmadis had been charged under blasphemy or anti-Ahmadi laws (US Department of State 2007, *International Religious Freedom Report: Pakistan*, 14 September [www.state.gov/g/drl/rls/irf/2007/90233.htm](http://www.state.gov/g/drl/rls/irf/2007/90233.htm) - Accessed Wed, 26 Sep 2007).

The independent sources document numerous acts of violence against Ahmadi people in Pakistan. Among those referred to in the State Department’s 2007 report on religious freedom in Pakistan were the following:

In June 2006, following an attack during which a mob injured two Ahmadis and destroyed their property, Sialkot District police arrested seven Ahmadis and removed 75 from the village for fear of more attacks. Police arrested four Ahmadis for alleged Qur'an desecration. Later, hundreds of persons demonstrated against the alleged desecration and damaged an Ahmadiyya house of worship. Police deployed to avert more damage...

On April 8, 2007, local extremists tortured and killed Chaudhry Habibullah Sial, an 82-year old Ahmadi man who was using his home as a prayer center for Ahmadis.

On March 1, 2007, a former police officer killed Mohammed Ashraf, an Ahmadi, because Ashraf changed his religion from Sunni to Ahmadi. The killer claimed to have done nothing wrong and that he followed Islamic law, since apostasy is punishable by death.

In November 2006 two Ahmadi men in Bagar Sargana were attacked by a mob on their way home after Friday prayers.

In October 2006 an Ahmadi imam at a mosque in Chawinda was attacked in his apartment in the mosque complex.

In September 2006 Professor Abdul Basit, an Ahmadi, was attacked in his home in Dera Ghazi Khan.

On August 22, 2006, Munawwar Ahmad Sahib, an Ahmadi, was killed by two gunmen in his home in Gujrat.

In August 2006 an Ahmadi youth, Etez Ahmad, was attacked in the shop where he worked as an apprentice. The attacker said he was trying to kill an infidel. (ibid.)

The State Department reported that some Sunni Muslim groups published literature calling for violence against Ahmadis, Shi'a Muslims, other Sunni sects, and Hindus. It stated, “Ahmadi individuals and institutions long have been victims of religious violence, much of which organized religious extremists instigated.” According to the State Department, mobs occasionally attacked individuals accused of blasphemy, their family, or their religious community prior to their arrest. When blasphemy and other religious cases were brought to court, extremists often packed the courtroom and made public threats against an acquittal. (ibid.)

The State Department's report also referred to confiscation of Ahmadi property. For instance, it was reported that, in the wake of July 2004 protests, police in Chenab Nagar (Rabwah) continued to retain property of the local Ahmadiyya community on which a makeshift mosque had once existed.

## **FINDINGS AND REASONS**

The applicant claims to be a national of Pakistan and travelled to Australia on a Pakistani passport. For the purposes of the Convention, the Tribunal has therefore assessed her claims against Pakistan as his country of nationality.

The Tribunal accepts that the applicant is a person of Ahmadi religious faith. As noted above, the applicant has produced to the Tribunal a letter from a senior official of the Ahmadiyya Muslim Association of Australia attesting to the fact that the applicant is a member of the Ahmadiyya Muslim community. The applicant's family members, F1 and F2 were both admitted to Australia on a certain category of visas. To qualify for such a visa, a person must meet certain requirements.

The applicant has provided a consistent and credible account of having converted to the Ahmadi faith as a result of her marriage to a person of that faith. The Tribunal accepts that the applicant converted from Sunni Islam to the Ahmadi faith in these circumstances.

The applicant's account of her circumstances in Pakistan and the circumstances that led her to leave Pakistan is consistent with the independent country information concerning the treatment of the Ahmadiyya community in Pakistan. It is supported by the evidence of her family members F1 and F2. A generally credible and consistent account of these matters has been put before the Tribunal.

The Tribunal accepts that when the applicant married her husband and converted to the Ahmadi faith she faced considerable disapproval from her family in particular. The independent information indicates that there is strong societal disapproval towards Ahmadi converts and that this can result in violence. For instance, the US State Department documented a case in which a retired police officer shot and killed a recent Ahmadi convert in a restaurant in Seerah, Mandi Bahauddin District and later claimed that the act was justified under Islamic apostasy laws. The State Department reported that authorities "often accused converts to the Ahmadiyya community of blasphemy, violations of the anti-Ahmadi laws, or other crimes" It is therefore entirely plausible that the applicant would have been ostracised and threatened by her family and others in her community following her conversion.

The Tribunal also accepts the applicant's description of the problems suffered by her and her family in Year 1. Her family member, F1, also attested to some recollection of these events. As outlined above, an article from a reliable source confirmed a "wave of anti-Ahmadi disturbances" across Pakistan in Year 1. The Tribunal accepts that the applicant and her family were subjected to abuse and threats at that time. It accepts that they were forced to remain in their home.

It is apparent that the applicant spent a considerable period living in Village V, remaining there until after the death of her husband in Year 3. This might suggest that there was a period when she perhaps faced fewer problems as a consequence of her religion.

Nevertheless, the Tribunal accepts that the applicant's religion would have placed her at some risk even during the period when she lived in Village V with her husband. As outlined above, there are specific laws targeted at religious minorities, including anti-Ahmadi laws and blasphemy laws. As noted by the US Department of State, the law declares the Ahmadi community to be a non-Muslim sect. The law prohibits Ahmadis from engaging in any Muslim practices, including using Muslim greetings, referring to their places of worship as mosques, reciting Islamic prayers, and participating in the Hajj or Ramadan fast. Ahmadis are prohibited from proselytising or holding gatherings. Ahmadis are subject to significant discrimination in relation, for instance, to employment and access to education. The independent information also indicates that the targeting of Ahmadis by others in Pakistan has been a long-standing phenomenon. One example has indicated that Ahmadis have endured "senseless persecution" for over five decades. It may be that the applicant made a life for herself in Village V but the Tribunal nevertheless considers that this would have been very much on the margins of Pakistani society.

With regard to the problems which ultimately led to the applicant's departure from Australia, it has been claimed that, following the death of her husband, the applicant lived with her family member F1 in Suburb S. After F1's marriage, she lived close to F1 who moved in with their extended family. The applicant's evidence in this regard has been credible and consistent, and is supported by the evidence of her family members F1 and F2. The Tribunal accepts that the applicant lived with F1 in Suburb S as claimed. It has been claimed that the applicant's family members F2 and F1 came to the adverse attention of the authorities and others in their community and were forced to come to Australia for their own protection. Information available to the Tribunal confirms that F2 and F1 came to Australia on a certain category of visas. As outlined above, such a visa was only granted in certain circumstances. The Tribunal accepts that the problems experienced by F1 and F2 were substantial. It accepts that, because of their Ahmadi faith, they came to the adverse attention of the authorities and others in their community. This is consistent with independent information which indicates that Ahmadis face a range of difficulties, including restrictions on their practice, the threat of prosecution and societal violence. The Tribunal considers that, to the extent that this remains known, the applicant's conversion from Sunni Islam would exacerbate the strength of feeling against her and increase the risk of her suffering harm.

The Tribunal accepts that, in the wake of the departure of her family members F1 and F2, the applicant's difficulties were exacerbated. It accepts as entirely plausible that the departure of F1 and F2 drew her to the attention of those in her community opposed to Ahmadis. It has been submitted that the applicant's situation became worse in Year 4. At that time, extremists blocked her water and her sewerage. Extremists also threatened doctors or others who provided her with assistance. She was subjected to demands for money and was pressured to leave her home. The applicant claims that it became difficult for her to go out. The Tribunal accepts that the applicant suffered problems of the type described. The independent country information indicates that there is strong prejudice against Ahmadis and that this manifests itself in various forms of harm. Particularly in circumstances where the applicant's family members F1 and F2 had sought refuge in Australia, the Tribunal accepts that the applicant became the subject of attention from others in her community and was subjected to ongoing harm. It accepts that this harm became worse in Year 4. The applicant's evidence as to her experiences in the period prior to her departure is supported by the evidence of F1 and F2.

Although the applicant was initially somewhat vague about this at the hearing, the Tribunal accepts that she moved to City A for some months prior to her departure. The Tribunal

accepts the evidence that the applicant's property in Suburb S has since been taken over by other members of her community. As set out above, the US State Department has reported that the government has made little effort to bring to justice those responsible for acts of religious violence or to provide protection for the targets or their families. Religious extremists have been responsible for instigating violence against Ahmadis. In this environment of impunity, the Tribunal accepts that, having come to the attention of people in her community who are opposed to Ahmadis, the applicant was effectively dispossessed of her property. It considers that, in such an environment, the applicant would have little hope of successfully approaching the authorities for a remedy.

Information produced to the Tribunal indicates that the applicant applied for a previous visa for Australia in Year 4, around the time when her situation in Pakistan was worsening. She was granted a visa some months later and arrived in Australia soon after. The Tribunal accepts that it may have taken some time to make the financial and logistical arrangements for the applicant's departure from Pakistan. The applicant applied for a protection visa, shortly before the expiry of her other visa. While she might have lodged a protection visa application sooner, the Tribunal does not consider the delay in this case to be of great significance. In all the circumstances, it does not consider the circumstances of her departure from Pakistan and her application for a protection visa to be such as to undermine the credibility of her claims concerning the reasons for her departure from Pakistan.

The Tribunal accepts that the applicant left Pakistan in circumstances where she had come to the attention of religious extremists in her community. It accepts that she was subjected to ongoing harassment and difficulties in her community. It accepts that her property has been confiscated. Independent information indicates that Ahmadis face a range of difficulties, at the hands of both the authorities and other members of Pakistani society. The Tribunal finds that there is a real chance that the applicant would suffer persecution for reason of her religion if she were to return to Pakistan. In circumstances where she has come to attention in the past and has had her property confiscated, the Tribunal cannot dismiss as remote the chance that the applicant would be subjected to serious physical harm if she were to return to Suburb S. The independent information indicates that the government makes little effort to respond to such harm. The Tribunal is satisfied that the applicant would not be able to access adequate state protection against harm directed at her for reason of her religion. The Tribunal is satisfied that the applicant's fear of suffering persecution for reason of her religion is well-founded.

The Tribunal accepts the evidence of the applicant and F1 that the applicant's relationship with her family member F3, has broken down and that she cannot rely on any support from F3. The applicant has indicated that she lived with another relative, a distant relative, in City A for several months before coming to Australia. The applicant's family member F2 indicated who that distant relative was. The applicant has claimed that she was able to stay with this relative only on a temporary basis. The applicant is not a young woman. It is apparent that she is somewhat frail and requires some support. It is likely that her need for support will increase over time. It was apparent from her evidence at the hearing that she did not consider that distant relative to be a close relative. The Tribunal accepts that the distant relative has indicated that he is unable to support the applicant on a long-term basis. The applicant is a member of a religious minority which faces discrimination in a number of respects. In all the circumstances, the Tribunal does not consider that it is reasonable to expect the applicant to relocate to City A where she does not have close family of her own. While the applicant indicated that she had not suffered problems in City A as a result of her

religion, she was there for only a short period and it is likely that her religious faith was not well known. However, if the applicant's religion and her conversion were to become known to people in City A, she would also face a risk of suffering harm there. The independent information indicates that the Pakistani authorities do not provide adequate protection to Ahmadis anywhere in Pakistan.

There is no suggestion that the applicant has a right to enter and reside in a third country such that s.36(3) of the Act would apply.

In making its findings, the Tribunal has noted that the Department's records indicate that a person with the same name and year of birth as the applicant visited Australia in Year 2. The applicant has consistently insisted that this is not her. It has been put to the Tribunal that this is a case of mistaken identity. It has been submitted that the person who came in Year 2 gave a particular year as their date of birth whereas the applicant gives her date of birth differently. The Tribunal considers that a person who knew only their year of birth might conceivably give their date of birth in either of these ways. In circumstances where the applicant herself claims to be illiterate, the manner of recording of her date of birth would depend very much on the person filling out the form on her behalf. It has also been submitted that, while the incoming passenger card for the person who arrived in Year 2 was signed, the applicant was unable to sign. However, based on the Outgoing Passenger Card produced on the applicant's behalf, the Tribunal has some doubt as to whether the person who departed Australia on a stated date in Year 2 in fact demonstrated a clear ability to sign her name.

It may be that further inquiries would reveal more information about the person who visited in Year 2 or about the applicant's passport history. However, the Tribunal has not found it necessary to make any further inquiries or any findings as to whether the applicant has visited Australia previously. Even if the Tribunal were to find that the applicant had visited Australia in Year 2, it would remain satisfied that she is a person of Ahmadi religious faith and that she suffered the problems she claims to have suffered in the period prior to her departure. The Tribunal considers that the evidence points strongly towards a finding that the applicant is an Ahmadi. Her evidence as to the events precipitating her departure has been credible and consistent. It finds support in the independent country information and the evidence of other witnesses. Even if the Tribunal were to find that the applicant had in fact visited Australia previously, in contradiction of her denials, this would not entitle it to dismiss all of her evidence as to subsequent events. The Tribunal might conclude that the applicant's circumstances at that time, many years ago, were not as serious as she claims that they now are but that would not prevent her from being a refugee at the current time. The Tribunal has therefore found it unnecessary to pursue this matter further and has not made any finding as to whether the applicant in fact visited Australia in Year 2.

Following the further hearing, it was submitted that the use of a particular interpreter at that hearing might lead to "possible repercussions" if the applicant were to return to Pakistan. The precise manner in which this might occur was not detailed. The Tribunal considers that, if the applicant or her adviser had clear concerns in this regard, they had ample opportunity to raise them at the hearing. The hearing proceeded on the basis of an arrangement suggested by the applicant's adviser without any prompting from the Tribunal. There is nothing to suggest that the interpreter has acted other than in a professional manner in relation to this particular proceeding. The Tribunal does not consider that the submissions identify a sustainable *sur place* claim. In any event, the Tribunal has found for other reasons that the applicant faces a real chance of Convention-related persecution if she returns to Pakistan. It finds that she would not be able to access adequate state protection in relation to the harm that she fears.

## **CONCLUSIONS**

The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2) for a protection visa.

## **DECISION**

The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act* 1958.

Sealing Officers ID: PRRTIR